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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13

14 CYNTHIA LANGSTON,
15
16 Plaintiff,

Case No. C-10-01084-SI

**FIRST AMENDED COMPLAINT FOR
VIOLATION OF CIVIL RIGHTS AND
DAMAGES**

17 vs.

(JURY TRIAL DEMANDED)

18
19 CITY OF OAKLAND, a municipal corporation;
20 WAYNE G. TUCKER, in his capacity as Chief of
21 Police for CITY OF OAKLAND; PATRICK GERRANS,
Individually, and in his capacity as a police officer for
22 CITY OF OAKLAND; and, DOES 1-25, inclusive,
Defendants. /

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24 **JURISDICTION**
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26 1. This action arises under Title 42 of the United States Code, Section 1983. Jurisdiction is
27 conferred upon this Court by Title 28 of the United States Code, Sections 1331 and 1343. The
28 unlawful acts and practices alleged herein occurred in the City of Oakland, California, which is

1 within this judicial district. Venue is conferred upon this Court by Title 28 United States Code
2 Section 1391(b).

3 **PARTIES**

4 2. Plaintiff is, and at all times herein mentioned were, an African-American woman, and a
5 citizen of the United States residing in the City of Oakland, California.

6 3. Defendant CITY OF OAKLAND (hereinafter referred to as "CITY") is a municipal
7 corporation, duly organized and existing under the laws of the State of California. At all times
8 herein mentioned, defendant, WAYNE G. TUCKER, was the Chief of Police for the CITY.
9 Defendant, WAYNE G. TUCKER, is sued herein in his capacity as the Chief of Police for the
10 CITY.

11 4. At all times mentioned herein, defendants PATRICK GERRANS; and, DOES 1-25,
12 inclusive, were employed by Defendant CITY as police officers. Said defendant police officers
13 are sued herein individually, and in their capacity as police officers for Defendant CITY. In
14 engaging in the conduct described herein, defendant police officers acted under color of law and
15 in the course and scope of their employment by Defendant CITY. In engaging in the conduct
16 described herein, defendant police officers exceeded the authority vested in them as police
17 officers under the United States and California Constitutions and as police officers employed by
18 Defendant CITY. Upon information and belief, plaintiff alleges that named defendant officers
19 and DOES 1-10, inclusive, were Caucasian, Latin American, and/or Asian-American.

20 5. DOES 1-10, inclusive, are defendant police officers employed by defendant CITY, acting
21 within the course and scope of their employment by defendant CITY, who were directly
22 involved in the wrongful and excessive use of force against plaintiff, the wrongful and false
23 detention and arrest of plaintiff, the wrongful and improper search of plaintiff, and the racial
24 misconduct towards plaintiff, as described hereinafter.

25 6. DOES 11-25, inclusive, are defendant police officers employed by defendant CITY, acting
26 within the course and scope of their employment by defendant CITY, who were employed in a
27 supervisory capacity by defendant CITY and were responsible in some manner for properly and
28 adequately hiring, retaining, supervising, disciplining, and training named defendant police
officers employed by the CITY in the proper and reasonable use of force, effecting proper

1 detentions and arrests, effecting proper searches, and treating persons in a manner that is not
2 racially discriminatory.

3 7. Plaintiff is ignorant of the true names and capacities of defendant DOES 1-25, inclusive,
4 and therefore sue these defendants by such fictitious names. Plaintiff is informed and believes
5 and thereon alleges that each defendant so named is responsible in some manner for the injuries
6 and damages suffered by plaintiff as set forth herein. Plaintiff will amend her Complaint to state
7 the true names and capacities of defendants DOES 1 through 25, inclusive, when they have been
8 ascertained.

9 8. In engaging in the conduct described herein, defendant police officers acted under the
10 color of law and in the course and scope of their employment with Defendant CITY. In
11 engaging in the conduct described herein, defendant police officers exceeded the authority vested
12 in them as police officers under the United States and California Constitutions, and as employees
13 of Defendant CITY.

14 **STATEMENT OF FACTS**

15 9. On 3-13-08, at approximately 8:30 p.m., plaintiff CYNTHIA LANGSTON, an African-
16 American woman, then 50 years old, was driving her car in the vicinity of the 400 block of West
17 Macarthur Blvd., in Oakland, CA. with two passengers, Rodney Johnson and Gregory Mosely.
18 At this point her car was directed to pull over by defendant Oakland police officers PATRICK
19 GERRANS and DOE 1. Plaintiff complied, pulled over, and parked her car. Then defendant
20 GERRANS walked up to her car and demanded that she get out of her car. Plaintiff complied
21 and got out. Defendant DOE 1 also walked over to plaintiff's car. Defendant GERRANS then
22 handcuffed plaintiff, and asked if he could search her. Plaintiff responded by asking why he
23 wanted to search her, and defendant GERRANS then began searching her person without her
24 consent. Defendant GERRANS not only wrongfully searched plaintiff's person, but also
25 wrongfully molested her and assaulted and battered her, when he put his hands on her breast and
26 raised it upwards. As he proceeded with his wrongful search, molestation, and assault and
27 battery of plaintiff, defendant officer GERRANS was smiling at plaintiff in a leering manner.

28 10. At this point, Rodney Johnson asked defendant GERRANS why he was touching
CYNTHIA LANGSTON in this manner. Defendant officer DOE 1 responded to Mr. Johnson

1 saying, "Shut the fuck up, before I blow your brains out." After defendant officer GERRANS
2 was done with his illegal search, assault and battery of, and molestation of plaintiff, he put her
3 backwards into his police car. After defendant officers ran plaintiff's I.D., defendant GERRANS
4 told plaintiff he was going to write her a citation and tow her vehicle, and then did so. The
5 abovementioned two passengers who were in plaintiff's car with her witnessed the entire event
6 involving defendant GERRANS, DOE 1, and plaintiff CYNTHIA LANGSTON.

7 11. Defendant officers had no probable cause to stop plaintiff's car, physically search her,
8 assault and batter her, molest her, or wrongfully detain her and then issue her a citation.
9 CYNTHIA LANGSTON had not done anything to provoke defendant officers' wrongful
10 detention, assault and battery and molestation of her, and she did nothing to physically resist
11 defendant officer GERRANSON during his assault upon and molestation of her. Further,
12 plaintiff was unarmed.

13 12. The above-described assault and battery and molestation of plaintiff by defendant
14 Oakland police officer GERRANSON, which defendant officer DOE 1 wrongfully did nothing
15 to prevent, was brutal, malicious, and was done without any just provocation or cause,
16 proximately causing injuries and damages to plaintiff.

17 DAMAGES

18 13. As the direct and proximate result of defendants' wrongful conduct, including assault and
19 battery; molestation; false arrest and imprisonment; and violation of civil rights, plaintiff was
20 injured and damaged, as set forth herein.

21 14. As a direct and proximate result of defendant officers' wrongful conduct, plaintiff
22 suffered the following injuries and damages:

23 a. Violation of her constitutional rights under the Fourth and Fourteenth Amendments to the
24 United States Constitution to be free from unreasonable search and seizure of her person;

25 b. Loss of physical liberty;

26 c. Physical injuries, pain and suffering, emotional trauma and suffering, and medical
27 expenses;

28 d. Violations of the following clearly established and well-settled federal constitutional rights
include but are not limited to: (1) freedom from unreasonable search and seizure of their persons

1 under the Fourth Amendment to the United States Constitution; and, (2) right to equal protection
2 under the Fourteenth Amendment to the United States Constitution;

3 e. The conduct of named defendant police officers; and DOES 1-10, inclusive, was malicious,
4 wanton, and oppressive. Plaintiff is therefore entitled to an award of punitive damages against
5 said defendant police officers; and,

6 f. Plaintiff found it necessary to engage the services of private counsel to vindicate her rights
7 under the law. Plaintiff is therefore entitled to an award of all attorneys' fees incurred in relation
8 to this action for violation of her civil rights.

9 **FIRST CAUSE OF ACTION**

10 **(42 U.S.C. Section 1983)**

11 **(Against named defendant police officer and DOES 1-10, inclusive)**

12 15. Plaintiff hereby realigns and incorporates by reference herein paragraphs 1 through 14 of
13 this Complaint.

14 16. In doing the acts complained of herein, defendant police officers PATRICK GERRANS
15 and DOES 1-10, inclusive, acted under color of law to deprive plaintiff of certain constitutionally
16 protected rights including, but not limited to:

17 a. The right to be free from unreasonable searches and seizures, as guaranteed by the Fourth
18 amendment to the United States Constitution;

19 b. The right not to be deprived of life or liberty without due process of law, as guaranteed by
20 the Fifth and Fourteenth amendments to the United States Constitution;

21 c. The right to equal protection of the laws, as guaranteed by the Fourteenth amendment to the
22 United States Constitution; and,

23 d. The right to be free from interferences with the zone of privacy, as protected by the Fourth
24 and Ninth Amendments to the United States Constitution.

25 WHEREFORE, plaintiff prays for relief as hereinafter set forth.
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SECOND CAUSE OF ACTION

(42 U.S.C. Section 1983)

(Against defendants CITY; WAYNE G. TUCKER; and DOES 11-25, inclusive)

17. Plaintiff hereby realigns and incorporates by reference herein paragraphs 1 through 16 of this Complaint.

18. Defendants CITY OF OAKLAND, City of Oakland Chief of Police, WAYNE G. TUCKER, and DOES 11-25, supervisory employees of the City of Oakland Police Department have failed to adequately train defendant police officers PATRICK GERRANS; and DOES 1-10 in the proper use of force; effecting proper arrests; effecting proper searches; and treating persons in a manner that is not racially discriminatory. The lack of an adequate supervisory response and discipline by defendants CITY OF OAKLAND, City of Oakland Chief of Police, WAYNE G. TUCKER; and DOES 11-25, supervisory employees of the City of Oakland Police Department, and lack of adequate supervisory training, demonstrates the existence of an informal custom or policy that tolerates and promotes the continuing use of excessive force against, false arrest of, improper searches of; and violation of civil rights of persons within the CITY OF OAKLAND by Oakland police officers.

19. Based on information and belief, plaintiff alleges that prior to the date of the subject incident involving plaintiff CYNTHIA LANGSTON, defendant Oakland police officers GERRANS and DOE 1 had a history of engaging in acts of excessive force; false arrests; improper searches; and treating persons in a manner that is racially discriminatory; of which history defendants CITY, WAYNE G. TUCKER; and DOES 11-25, inclusive, knew or should have known for quite some time prior to the subject incident involving plaintiff. Based on information and belief, plaintiff further alleges that despite their knowledge of defendant Oakland police officers' GERRANS' and DOE 1's repeated, egregious misconduct, defendants CITY, WAYNE G. TUCKER, and DOES 11-25, inclusive, failed to properly and adequately train, supervise, and discipline defendant Oakland police officers GERRANS and DOE 1 for said repeated and egregious misconduct.

1 20. Plaintiff is further informed and believes and thereon alleges that as a result of the
2 deliberate indifference, reckless and/or conscious disregard of the prior misconduct of defendant
3 police officers GERRANS and DOE 1, defendants CITY; WAYNE G. TUCKER; and DOES
4 11-25, inclusive, approved, ratified, condoned, encouraged and/or tacitly authorized defendant
5 police officers GERRANS and DOE 1 to continue their course of misconduct, resulting in the
6 violation of plaintiff's rights and injuries and damages to plaintiff as alleged herein.

7 21. Defendant CITY, by and through its supervisory employees and agents, WAYNE G.
8 TUCKER, Chief of Police for defendant CITY, and DOES 11-25, inclusive, has and had a
9 mandatory duty of care imposed on it by the 4th and 14th Amendments to the United States
10 Constitution, to properly and adequately hire, train, retain, supervise, and discipline its police
11 officer employees so as to avoid unreasonable risk of harm to citizens as the proximate result of
12 CITY police officers assaulting and battering, effecting false arrests and imprisonments,
13 effecting improper searches; and treating persons in a racially discriminatory manner. With
14 deliberate indifference, Defendants CITY, WAYNE G. TUCKER, and DOES 11-25, inclusive,
15 failed to take necessary, proper, or adequate measures in order to prevent the violation of
16 plaintiff's rights and injuries to plaintiff. With deliberate indifference, defendants CITY,
17 WAYNE G. TUCKER, and DOES 11-25, inclusive, breached their duty of care to plaintiff in
18 that they: (1) failed to adequately hire, retain, supervise, discipline, and train police officers,
19 including defendant police officers GERRANS and DOE 1, in proper use of force, effecting
20 proper reasonable arrests, effecting proper searches; and treating persons in a manner that is not
21 racially discriminatory; (2) failed to have adequate policies and procedures regarding proper use
22 of force; effecting proper arrests; effecting proper searches; and treating persons in a manner that
23 is not racially discriminatory; (3) acted with deliberate indifference, in reckless and/or conscious
24 disregard of the prior misconduct of defendant police officers GERRANS and DOE 1, and, (4)
25 approved, ratified, condoned, encouraged and/or tacitly authorized defendant police officers
26 GERRANS and DOE 1 to continue their course of misconduct of use of excessive force,
27 effecting false arrests and imprisonments, improper and wrongful searches, and treating persons
28 in a racially discriminatory manner, resulting in violation of plaintiff's rights, and injuries and
damages to plaintiff as alleged herein..

22. This lack of adequate hiring, retention, supervision, training, and discipline of defendant police officers GERRANS and DOE 1 demonstrates the existence of an informal custom or policy of promoting, tolerating, and/or ratifying the continuing use of excessive unreasonable force; wrongful false arrests; wrongful improper searches; and treating persons in a racially discriminatory manner by police officers employed by defendant CITY.

23. The above-described misconduct by Defendants CITY; WAYNE G. TUCKER; and DOES 11-25, inclusive, resulted in the deprivation of plaintiff's constitutional rights, including but not limited to the following:

a. The right to be free from unreasonable searches and seizures, as guaranteed by the Fourth amendment to the United States Constitution;

b. The right not to be deprived of life or liberty without due process of law, as guaranteed by the Fifth and Fourteenth amendments to the United States Constitution;

c. The right to equal protection of the laws, as guaranteed by the Fourteenth amendment to the United States Constitution; and,

d. The right to be free from interferences with the zone of privacy, as protected by the Fourth and Ninth Amendments to the United States Constitution.

Said rights are substantive guarantees under the Fourth and/or Fourteenth Amendments to the United States Constitution.

24. Further, the acts of defendant police officers GERRANS and DOE 1 alleged herein are a direct and proximate result of the abovementioned wrongful conduct of Defendants CITY; WAYNE G. TUCKER; and DOES 11-25, inclusive. Plaintiff's injuries and damages were a foreseeable and proximate result of the abovementioned wrongful conduct of defendant police officers GERRANS and DOE 1 and the abovementioned wrongful conduct of CITY; WAYNE G. TUCKER; and DOES 11-25, inclusive.

WHEREFORE, plaintiff prays for relief as hereinafter set forth.

JURY DEMAND

25. Plaintiff hereby demands a jury trial in this action.

PRAYER

1 WHEREFORE, plaintiff prays for relief, as follows:

- 2 1. for general damages in the sum of \$ 500,000.00;
- 3 2. for special damages according to proof;
- 4 3. for punitive damages against named defendant police officers, according to proof;
- 5 4. for reasonable attorney's fees pursuant to 42 U.S.C. Sections 1983 and 1988;
- 6 5. For costs of suit herein incurred; and,
- 7 6. For such other and further relief as the Court deems just and proper.

8 LAW OFFICES OF GAYLA B. LIBET

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11 Dated:_____ By:

12 GAYLA B. LIBET, Esq.

13 Attorneys for Plaintiff

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